IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6844 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI PRABHUDAS ADIAL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 7-7-1999 passed by respondent No. 2 - The Commissioner of Police, Vadodara against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti

Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- B interalia indicate that the petitioner is alleged to have been involved in four criminal cases registered at Navapur Police Station, Vadodara. The first criminal case registered vide C.R. No ; 120/97 on 27-9-97, second case vide C.R. No : 50/98 dated 31-3-98, third case is registered vide C.R. No : 233/98 dated 5-12-1998 and forth case is registered vide C.R. No : 111/99 dated 8-6-1999. That all the four cases are registered in respect to offences made punishable under Section 324, 504, 506(2), 143, 147, 148 and 337 and 427 of IPC etc. That first three cases are pending for trial in the Court, while the forth case is pending for investigation.

Over and above, that three witnesses on assurance of their anonymity have given their statement dated 6-6-1999, 6-6-1999 and 7-6-1999 respectively narrating the prejudicial activities of the petitioner and have stated the incidents alleged to have occurred on 16-5-99, 2-5-99 and 13-5-99 respectively. That on the basis of the said material, respondent No : 2 as the detaining authority has come to the conclusion that the petitioner is a dangerous person within a meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that in the absence of any reasonable explanation, the inordinate delay in passing the impugned order on 7-7-1999 from the date of last registered offence dated 8-6-1999 on which the impugned order is based, the subjective satisfaction is vitiated and has rendered the impugned order invalid.

#. In the matter of PRADEEP NILKANTH PATURKER VS STATE OF MAHARASTHRA reported vide AIR 1994 Supreme Court 656 having followed the earlier decisions, the Hon'ble Supreme Court has held that if the delay in taking impugned action from the last date of anti social activities of the detenu, is not satisfactorily explained, the order is vitiated and cannot be sustained.

That said proposition has been reiterated by this Court in the matter of ELESH PATEL VS. COMMISSIONER OF POLICE, AHMEDABAD reported 1997 (1) GLH 381 after considering the various authorities of the Supreme Court.

#. In the instant case, the first three cases registered against the petitioner are of the year 1997 and 1998 , whereas the fourth case appears to have been registered on 8-6-1999. The petitioner was arrested on 10-6-1999 and was released on bail on 11-6-1999. Further scrutiny of grounds suggests that the anonymous witnesses have given their statement on 6-6-1999 and 7-6-1999 wherein, the incidents alleged to have occurred on 16-5-1999, 2-5-1999 and 13-5-1999 have narrated. However, said statements are verified only on 3-7-1999 and 4-7-1999 respectively. There is no explanation for the said delay and impugned action appears to have been taken on 7-7-1999. That the respondent No : 1 has filed affidavit in reply dated 2nd February 2000 and despite specific plea raised by the petitioner in the petition, the affidavit filed is devoid of any explanation for delayed action in passing the impugned order.

#. In the above stated facts and circumstances delay in passing the order on 7-7-1999 when the information was received regarding the registered offence on 8-6-1999, having remained unexplained, it is difficult to sustain the order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-7-1999 passed by respondent No. 2 - The Commissioner of Police, Vadodara against the petitioner is hereby quashed and set aside. The petitioner - DAHYABHAI PRABHUDAS ADIAL is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 29-2-2000 (A.K.Trivedi, J.)
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